

Legal Services
14 May 1940

The Director

General Counsel

Report of Survey (Captain [REDACTED])

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OGC Has Reviewed

1. As head of an independent executive agency, you are authorized to establish rules and regulations for the protection and control of Government property. Under this authority, you have established the SO Property Survey Board, whose action is normally final in clear-cut cases. In all cases, however, and particularly in borderline situations, you have final power to relieve or certify to liability.

2. Where the head of an agency has relieved a responsible or accountable officer, I am aware of no case where, in the absence of fraud, there has been a subsequent attempt by any other branch of the Government to hold the individual liable. On the other hand, your certification as to liability would normally be accepted by the other departments and agencies of the Government.

3. The situation here, of the jeep being stolen from a private parking place, is a familiar one. The circumstances in each case vary, indicating negligence to a greater or less degree. The point where negligence becomes sufficient to impose liability is one of the most difficult of all legal points to determine, and in the courts is frequently left to the jury. But the judge may instruct the jury somewhat as follows:

If an ordinary reasonable man, in the circumstances here described, should have realized that his actions might lead to a loss of this type and such loss did then occur as the direct result of his acts, or failure to act, he may then be held liable for the loss.

4. This case has received careful consideration, and there is no indication that there are any further facts or extenuating circumstances to be considered. Since each case is so definitely affected by local conditions, considerable weight should be given to the original Report of Survey. The main point brought out

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by [REDACTED] in his appeal is that since he had parked under similar circumstances before, he had no reason to feel that the attendant would not fully safeguard the vehicle. In view of this, the real question is: Was he reasonable in such a belief, or should he have realized that in the local circumstances then prevailing, his precautions were not adequate? The SC Property Survey Board considered this question and approved the Surveying Officer's finding that insufficient precautions were taken.

LAWRENCE R. HOUSTON

LRH:mbt

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